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No.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

Lloyd Vickroy

Appellant,

v.

United States Department of the Navy, Long Beach Naval Shipyard

Appellee.

On Appeal from the U.S. Ninth Circuit Court of Appeals

JURISDICTIONAL STATEMENT

Lloyd Vickroy
Pro Per
8297 Petunia Way
Buena Park,
California 90620
714-521-0840

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"Questions Presented"

Does a civilian employed by the U.S. Department of the Navy, under the protection of the Fair Labor Standards Amendment of 1974, enjoy the same civil and constitutional rights as employees in the private sector.

The caption of the case in this Court contains the names of all parties.

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JURISDICTION

This is an appeal from the judgement of the United States Court of Appeals for the Ninth Circuit originally dated 16 January 1981, (rehearing denied on March 2, 1981) affirming the judgement of the United States District Court for the Central District of California dated October 31, 1978.

OPINIONS BELOW

The district court dismissed the action on motion by the defendant, offering no published opinion. Appendix A, infra, 1. pages 4A and 4B.

The court of appeals rendered an opinion that is unpublished. Appendix A, infra, 2. pages 4B and 4C.

STATEMENT

The Appellant filed a grievance with the Appellee on 24 February 1977, for the failure of the Appellee to comply with the provisions of the union agreement, dated 11 February 1974, in effect at that time. In the Agreement under Article XXII, Additional Pay, Dirty Work, Section 7(a): While Working In A Drydock, the Appellee, in failing to pay the Appellant, was in violation of 29 U.S.C. 254(b)(2), when paying others as a common practice and per written agreement. The pay records of the Appellee will show discrimination, of minimum wages, denied to the Appellant, between 15 October 1976, up to and including 26 July 1977. These pay records will show daily hours, per employee, of environmental pay made to Shop 64 and Shop 99 employees in Drydock 2, the Appellant being a member of Shop 99. This grievance proceeded throught three steps as required in the Agreement. In the final step the Appellee violated the Appellant's Right of Due Process, Fifth Amendment, by denying a request for arbitration and failing to provide an avenue for final hearing and arbitration before the National Labor Relations Board, as defined under 29 U.S.C. 157, 158, and 160, thus allowing the Appellant the right of redress, in the courts, under 28 U.S.C. 1343(3)&(4). This grievance was terminated 15 June 1977, without being resolved.

The Appellant filed another grievance on 29 September 1977, for the failure of the Appellee to comply with the provisions of the Union agreement dated 11 February 1974, in effect at that time. In the Agreement under Article VIII, Section 5, Lunch Hour Rescheduling, the Appellee in failing to pay the Appellant was in violation of 29 U.S.C. 254(b)(2). This grievance proceeded through three steps as required in the Agreement. In the final step the Appellant's Right of Due Process, Fifth Amendment, by failing to provide an avenue for final hearing and arbitration before the National Labor Relations Board, as defined under 29 U.S.C. 157, 158, and 160, thus allowing the Appellant the right of redress in the courts under 28 U.S.C. 1343(3)&(4). This grievance terminated 9 December 1977, without being resolved.

A civil action was filed in the U.S. District Court for the Central District of California CV 78-2330-R for violation of the Fair Labor Standards Amendments of 1974 and was dismissed on motion by the defendant, 10/27/78. Appendix A infra, 1. pages 4A and 4B.

The Appellant filed an appeal in the U.S. Court of Appeals for the Ninth District, No. 79-3080. The court affirmed the dismissal of the district court, Appendix A infra, 2. pages 4B and 4C, and denied the petition for rehearing, Appendix A infra, 3. page 4C. Appendix B infra, pages 4D, 4E, and 4F.

APPENDIX A

1. UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA
ORDER DISMISSING ACTION NO. 78-2330-R
Lloyd Vickroy, Plaintiff,
v.
U.S. Department of Navy,
Long Beach Naval Shipyard, Defendant

Defendant's Motion to Dismiss in the above-captioned action came on regularly for hearing on Monday, October 16, 1978 before the Honorable Manuel L. Real, United States District Judge. Defendant appeared though Andrea Sheridan Ordin, United States Attorney, Frederick M. Brosio, Jr., Assistant Untied States Attorney, Chief, Civil Division, by Katherine V. Tooks, Assistant United States Attorney; and plaintiff, Lloyd Vickroy, appeared in *pro per.* Upon consideration of the pleadings, memoranda submitted by the parties and oral arguments, and after due deliberation theron:

THE COURT FINDS THAT:

1. Plaintiff filed this action against the United States Department of the Navy, Long Beach Naval Shipyard, in Long Beach, California on June 16, 1978, for alleged violations by his employer of a written labor agreement.

2. Plaintiff alleged the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* as the jurisdictional basis for his Complaint.

3. Plaintiff prayed for monetary damages in excess of $10,000.00.

4. Defendant filed a motion to dismiss this action on the grounds that the Court lacks subject matter jurisdiction and the Complaint fails to state a claim upon which relief can be granted. The Court, being fully advised, finds that it has no jurisdiction of this action.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant's motion to dismiss is granted and that the plaintiff's action be, and the same is hereby dismissed.
27 Oct 78

UNITED STATES DISTRICT JUDGE

2. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
MEMORANDUM No. 79-3080
Lloyd Vickroy, Appellant
v.
U.S. Department of the Navy,
Long Beach Naval Shipyard, Appellee.

Appeal from the United States District Court for the Central District of California Manuel L. Real, District Judge, Presiding Argued and Submitted December 5, 1980, before: CHAMBERS and TANG, Circuit Judges, and SOLOMON, District Judge, District of Oregon.

Vickroy is employed by the Department of the Navy under the Federal Employees Metal Trades Council Agreement Of February 11, 1974. He pursued grievance procedures under under that Agreement

asserting claims falling within the coverage of that agreement. His grievance proceeding, which under Executive Order 11491 are "the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage," were unsuccessful. He then filed an action in district court alleging jurisdiction under the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

The District court, being a court of limited jurisdiction, had no alternative but to dismiss the action. The things of which Vickroy complains do not fall within the maximum hour, or minimum wage, or wrongful discharge protections, or any other provisions of the Act. Moveover, his complaint on its face would preclude any exercise of jurisdiction under the Tucker Act, 28 U.S.C. 1346 (a)(2). Appellant has not suggested any other potential theory upon which the district court might have assumed jurisdiction. Moreover, we cannot agree with Vickroy that the Tucker Act is unconstitutional. Affirmed.

3. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
ORDER DENYING PETITION
FOR REHEARING No. 79-3080
Lloyd Vickroy, Appellant
v.
United States Department of the Navy,
Long Beach Naval Shipyard, Appellee.
Before: CHAMBERS and TANG, Circuit Judges and SOLOMON, District Judge.

The petition for rehearing is denied.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT
Lloyd Vickroy, Appellant
v.
U.S. Department of the Navy,
Long Beach Naval Shipyard, Appellee
Petition for Rehearing No. 79-3080

ISSUES ON REHEARING:

1. Executive Order 11491, no longer has a bearing on this action.

2. 28 U.S.C. 1346(a)(2), does not now, nor had it ever had a bearing on this action

STATEMENT OF THE CASE ON REHEARING:

The Court's "Memorandum", concured with the Appellant, that in essence states, Civilians employed by the U.S. Department of the Navy are under the protection of 29 U.S.C. 201 et seq. The Court having so ruled affords the Appellant the "other potential theory upon which the district court might have assumed jurisdiction."

ARGUMENT:

1. DID THE FAIR LABOR STANDARDS ACT OF 1974 PLACE THE AGREEMENT OF 1974, UNDER THE PROTECTION OF 29 U.S.C. 157.

In the Appellant's Opening Brief, Page 2 under Argument 1., there is the notation of calling the Court's attention to the date of the Agreement, 11 February

1974 and the F.L.S.A. on 1 May 1974. It is agreed that Executive Order 11491 initiated the Agreement, but when the Congress passed the F.L.S.A. on 1 May 1974, placing the civilians employed by the U.S. Department of the Navy, under the F.L.S.A. of 1974, it is the contention of the Appellant, that the Agreement of 11 February 1974, did on 1 May 1974, become sanctioned by 29 U.S.C. 157 and Executive Order 11491 became moot, insofar as this Agreement was concerned.

2. DID THE EMPLOYER VIOLATE THE CIVIL AND CONSTITUTIONAL RIGHTS OF THE APPELLANT.

29 U.S.C. 157, "Employees shall have the right to self-organization ... and shall also have the right to refrain from any or all of such activities ...". The Court's attention is now called to the Record on Appeal, page 52, paragraph 2, "... The shipyard cannot deal directly with an individual employee ..." and paragraph 3, "... the Federal Employees Metal Trades Council as the exclusive bargaining agent ...". The Court will note the phrases, "... cannot deal directly with an individual employee ..." and "... exclusive bargaining agent ...". 29 U.S.C. 158, "Unfair labor practices by employer, It shall be an unfair labor practice for an employer - (1) to interfere with ... employees in the exercise of the rights guaranteed in section 157 of this title.". The employer did interfere with the employee and tried to force the "... individual employee ..." to deal only with and through a "... self organization ...", which had been clearly shown in the Record on Appeal, that the employee did not desire to do so and the Agreement provided a provision stating the employee was not required to do so. Failure of the

employer to provide a method to petition, as set forth under 29 U.S.C. 160 (b), has caused the violation of the Appellant's Civil and Constitutional Rights, by the Appellee, as set forth under F.L.S.A. of 1974 and the Fifth Amendment (Due Process). The Appellant, now states a claim, for which relief could be granted, under 28 U.S.C. 1343 (3) and (4).

CONCLUSION:

With those familiar to this action, the Appellant had ask for damages of $25,000.00 for each, of two occurances, of the Appellant's Right of Due Process. Also for a copy of the Agreement of 11 February 1974, to be used as evidence. It is the contention of the Appellant, that the Agreement is a part of the job description, as both are a part of conditions of employment and monies paid, for special conditions, should be made known at the time of employment, therefore violation of the Agreement on the part of the employer, is a violation of the job rights of the employee, as agreed to by both, the Appellee and the Appellant, at the beginning of employment. The Appellant still reguests a copy of the Agreement of 11 February 1974, to be brought into evidence, so this Court can better render a ruling of "Reversed", of the ruling of the district court. Further it is again requested that pay records, requested by the Appellant on page 3 of the Appellant's Opening Brief, so the Appellant may claim for compensatory and punitive damages, as well as the wages that are due and payable.

Lloyd Vicroy
Pro Per

CONCLUSION

The record on appeal to the U.S. Court of Appeals for the Ninth District and certified by the Clerk of the U.S. District Court for the Central District of California, dated 1/15/79, will show conclusive proof of the violations of the Appellant's civil rights, along with the pay records, in possession of the Appellee and the Agreement, in the possession of the Appellee.

The violations of 29 U.S.C. 216 by the Appellee, closely parallels the action taken on behalf of Lloyd Barrentine et al. v Arkansas-Best et al. No. 79-2006, on 6 April 1981, on Writ of Certiorari. The other violations of the Appellant's civil rights under 29 U.S.C. 157, 158, and 160, should be of particular interest to Chief Justice Buger and Justice Rehnquist, having dissented in the ruling of Barrentine et al. v Arkansas-Best et al., because of what was felt would always be an honest effort on the part of local arbitration to resolve labor problems, is shown to be, in the Appellant's case, a classic example of attempt, by the employer to deliberately and intentionally suppress, intimidate and deprive an employee of the right to the minimum wages, stated in a written agreement, to deliberately and intentionally deprive the employee of his civil and constitutional rights.

The Appellant requests the Court's indulgences in this action, as no prior precedent, known to the Appellant, has been established, for civilians employed by the U.S. Department of the Navy, under Public Law 93-259; U.S. Statute 88-55, 29 U.S.C. et seq., commonly known as the Fair Labor Standards of 1974. The U.S. Court of Appeals for the Ninth Circuit, concured with the Appellant on this point, Appendix A infra, 2. pages 4B and 4C.

It is requested that this Court accept jursidiction of this action, as they accepted the Writ of Centiorari, No. 79-2006, Barrentine et al. v Arkansas-Best et al.

Dated 19 June 1981

Lloyd Vickroy
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